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AUG 18 2005

Department of Water Resources

4253 Antelope Road  
Moore, ID 83255  
August 5, 2005

Gary Spackman  
State of Idaho Department of Water Resources  
322 East Front Street  
PO Box 883720  
Boise, ID 83720-0098

Dear Gary Spackman:

As Antelope Creek water users, we have concerns on how the mitigation plan approved for District 34 will affect our water rights. A meeting to discuss the events that occurred during 2005 and other issues would be greatly appreciated.

Many individuals have told us that Antelope Creek water rights are not involved in mitigation. It's understandable there would be no involvement by Antelope Creek water users in developing a mitigation plan for District 34, as there are no ground water users except at the mouth of Antelope Creek, which were represented in developing the mitigation plan.

Our concern is in the execution of the plan, which led to events in 2005 that may change the way Antelope Creek water is used in the future.

It has been rather difficult to ascertain the process that would have taken place and the damage to recharge and sub water levels, the economic, esthetic and environmental quality of the valley had the required forms been completed to use Antelope Creek water to satisfy mitigation burdens on the Big Lost River. What we do know is that the Jensen call for 1883 water right numbers 34-00372B, 34-00690B and 43-00372A caused all Antelope Creek surface water diversions to be discontinued with the exception of senior water rights located at the mouth of Antelope Creek. Reliable antidotal information suggests that at least one 1879 Antelope Creek water user at the mouth of Antelope Creek intended to use this right to satisfy mitigation requirements on the Big Lost River.

Antelope Creek connectivity to the Big Lost River is critical in conveying mitigation water to the Big Lost River. There were several unprecedented events that took place in 2005 that suggests a concerted effort to provide Antelope Creek connectivity to use Antelope Creek water for mitigation. There are no Antelope Creek water users that can ever recall shutting down the diversion of water at the beginning of the irrigation season or the unprecedented failure to divert Antelope Creek water to the Hanrahan ditch that conveys water to water rights as early as 1879. There was considerably more water in the overflow channel than in the main channel of Antelope Creek and the Advisory Board passed a motion to use Antelope Creek water for mitigation. (Minutes attached)

The unusual rains that occurred in May and June resulted all water rights being satisfied and the apparent intention to use Antelope Creek water for mitigation did not occur. However, our concern is that in future years where marginal amounts of water could cause connectivity of Antelope Creek to the Big Lost River. Shutting down surface water irrigation at the beginning of the irrigation season would have a devastating effect on the Antelope Creek valley with little beneficial use and extreme conveyance loss in satisfying calls for water in

the Big Lost River, while ground water users at the mouth of Antelope Creek continue out-of-priority water diversions. It is difficult to believe that a mitigation plan evolves into a plan that benefits junior ground water rights at the expense of senior surface water rights.

There is also the condition when Antelope Creek disconnects from the Big Lost River and is managed separately. It would appear that the call by Jensen and the response to the call pursuant to IDAPA 37.03.11.040.b supports the contention that Antelope Valley is included in District 34 as an area having a common ground water supply and is subject to conjunctive management. The question is, when Antelope Creek disconnects and is administered separately and an Antelope water user pursuant to IDAPA 37.03.11.040 makes a call; does the call affect all reaches of Antelope Creek including surface and ground water users at the mouth of the creek? Hydraulically connected ground water and surface water per IDAPA 37.03.13.13 may be accomplished by pumps lowering the sub and ground water levels of meadow reaches. When a call is made it generally results in all upper valley water rights to be cut-off resulting in increased stream flow to the mouth of Antelope Creek enhancing the supply of ground water for ground water pumping. Do Antelope Creek surface water users have the right to exercise their senior water rights as Big Lost River water users have when Antelope Creek is connected?

If IDAPA 37.03.11.040 is applied consistently to Antelope Creek water users it might be possible for the surface and ground water users to work together to maintain the historical use of water and prevent the destructive effects of discontinued surface diversion during the early part of the irrigation period.

Other issues that could be discussed are listed below.

1. Could IDAPA 37.03.12.050.01 (Rule 50) be applied to ground water users at the mouth of Antelope Creek where the burden of proof would be placed on the ground water users to show to the satisfaction of the director that well construction or location does not effect the flow and sub-water level of Antelope Creek?
2. Is Direct Interference IDAPA 37.03.12.050.05 a viable option where a junior ground water users at the mouth of Antelope Creek causes curtailment and damages to senior surface water rights through the process used to provide mitigation burdens to the Big Lost River while continuing out of priority diversions?
3. Connectivity of Antelope Creek to the Moore Diversion was established in 2005 by discontinuing Antelope Creek water diversions for a time period but no quantities were specified as required above the Mackay Dam and to some extent on Alder Creek. Would it be reasonable to require river flow and time to prevent unreasonable waste (IDAPA 37.03.12.020.04) to Antelope Creek connectivity as it is applied above the Mackay Dam (IDAPA 37.03.12.020.01)?
4. In order to prevent frivolous calls for water, it would be beneficial if petitioners were required to show proof of material injury as per IDAPA 37.03.11.040.01 and reasonable exercise of rights, IDAPA 37.03.11.040.03. Considering injury and quantifying unreasonable conveyance waste and amount of water at the place of use for benefit and a procedure to implement these rules may prevent the destructive effect on an entire valley.
5. When requesting a change in a water right is the burden of proof on the petitioner to prove the proposed change:

- a. Will not injure other water rights,
- b. Does not constitute an enlargement of the original water right,
- c. Is a beneficial use,
- d. Is consistent with the conservation of water resources within the state of Idaho, and
- e. Is in the local public interest?

Will Antelope Creek water users have the opportunity to object and will IDWR schedule a hearing or will the Director determine if the five requirements are met?

- 6. Temporary changes to the use of water rights during drought conditions provide a hearing if a request for a temporary change is denied. Is there any recourse through IDWR for water users that are injured by the process of water delivery, which enhances connectivity of Antelope Creek to the Big Lost River and the shutting down of Antelope Creek water diversions?
- 7. It was noted that after the Jensens' call for water this spring, the Mackay Dam was still storing water at the ratio of 9 to 1 of input of water to output. This was happening after all water distribution was curtailed in Antelope Creek. Why isn't this water used to satisfy the call for water? General provision 3G as explained in a letter dated May 16, 2002 by David R. Tuthill and clarified in Option C from the notes of a meeting on April 30, 2002 should also be applicable to Antelope Creek. Curtailment of water has the same affect on the Antelope valley as it does above the Mackay Reservoir.

Our concerns have been discussed with the District 34 water master however; some of the concerns may be outside the scope of his authority and the limited criteria for the conjunctive management of surface and ground water users for Antelope Creek places undue pressure in making arbitrary decisions.

Respectfully,

Upper Antelope Creek Water Users  
Tom Waddoups, correspondence addressee  
Phone: 208-554-3813

*Tom Waddoups* *Michael KEG*  
*Jan L. Tuthill* *Alvin Crawford*  
*David Luke* *Phil A. Keller*  
*Ed Harrop* *Jim Waddoups*  
*Josh Reese* *Sharon Lusk M.S.R.*

Enclosure (1)

Cc: Bob Duke, water master

Tim Luke, IDWR, Water Distribution

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**Water District #34  
Advisory Board Minutes  
May 19, 2005**

**Present: Eric Aikele, Larry Quist, Lin Hintze, Jay Jensen, Logan Williams, Preston Bell, Bob Duke, Darrell McDonald, Bob Waddoups. Loy Pehrson not present as of 7:15 pm. Eric Aikele nominated to chair meeting until Loy Pehrson shows up. Bob Waddoups acting secretary. Keith Hill came at 7:20 pm & Loy Pehrson at 7:30 pm.**

**Agenda:**

**#1-Mitigation quantities covered to date. Satisfied 6110 acre ft. accepted by IDWR, 6183.57 total amount credit as of today. Covers some small users. Watermaster Bob Duke proposed we use present water coming from Antelope now for the 1<sup>st</sup> 1/3 of mitigation. Discussion was: had, does, is, mitigation required. When those calls are being filled by natural flow. Eric Aikele made a motion - We use Antelope water presently reaching the Moore diversion, be allowed for the first 1/3 mitigation requirement. Seconded by Larry Quist. 7 members approved 1 abstaining ( Jay Jensen). Watermaster Bob Duke stated steps would be taken to determine amount of water going into the back channel above the reservoir. He stated there is an area where stability of the river would allow measurement.**

**Jay Jensen stated we need to address putting in structures to control the river to provide the Watermaster the ability to administer the water according to the rules of operation. Jay Jensen proposes we ask IDWR to provide expertise as to feasibility. Keith Hill says permission of the land would not be given. Bob Duke suggest we try to get**

**IDWR to put staff gauge on Mt. Springs bridge to determine flow in the back channel. Only control then would be to get dirt movement with equipment.**

**Keith Hill stated we instruct Watermaster Bob Duke to get IDWR, to install suggested meters. All members of board in favor of suggestion. Discussion entered into, about groups wanting fish ladders on delivers for white fish promotion or enhancement. Advisory Board feels reduction in white fish is due to drought conditions, not them going into canals. Board directs (Partnership for the West) for information on the white fish issue.**

**Meeting Adjoined 9:30 pm**